

DATE: January 12, 2004

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 01-15168

## **DECISION OF ADMINISTRATIVE JUDGE**

**JAMES A. YOUNG**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Jennifer I. Campbell, Esq., Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant incurred several debts when his wife ran up credit card expenses while he was deployed at sea with the U.S. Navy. His subsequent separation and divorce, and the initial support payments of \$28,000 a year, put Applicant further in debt. He has paid off most of the delinquent debts, had his support obligations reduced to \$14,000 a year, and made good-faith efforts to resolve the others. Applicant sufficiently mitigated the financial considerations security concerns. Clearance is granted.

### **STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On 16 May 2003, under the applicable Executive Order<sup>(1)</sup> and Department of Defense Directive,<sup>(2)</sup> DOHA issued a Statement of Reasons (SOR), detailing the basis for its decision-security concerns raised under Guideline F (Financial Considerations) of the Directive. Applicant answered the SOR in writing on 12 June 2003 and elected to have a hearing before an administrative judge. The case was originally assigned to another administrative judge, but was transferred to me on 12 November 2003. On 9 December 2003, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA received the transcript (Tr.) of the proceeding on 30 December 2003.

### **FINDINGS OF FACT**

Applicant served in the US. Navy as a fire control technician. Tr. 29. He entered the service in May 1990. He married in July 1992 and had three children with his wife. Ex. 1 at 5. Applicant's wife, using a power of attorney Applicant gave her so she could manage the family finances while he was deployed on extended sea duty, ran up tens of thousands of dollars of credit card debt. Tr. 10. On 30 October 1998, Applicant signed a separation agreement obligating him to pay \$28,000 a year in child and spousal support. Tr. 10-11. Applicant separated from the Navy in January 1999. Ex. 1 at 5. Applicant is now divorced. Applicant is no longer responsible for spousal support, only child support, thus reducing his

payments to \$14,000 a year.

The following chart summarizes the status of the allegations alleged by DOHA:

¶	Nature and Amount	Status	Record
1.a.	Collection acct \$292	Paid 3 Nov 2003	Ex. E at 4
1.b.	Delinq acct \$207	Debt transferred-unpaid	Tr. 23
1.c.	Charged off acct \$2,248	Paid \$2,200-owes \$1,000	Tr. 23, Ex. E at 4
1.d.	Delinq child support \$2,416	Father paid \$22,000	Ex. C
1.e.	Foreclosure for failure to pay	No resulting debt	Tr. 24, 33
1.f.	Collection acct television cable \$500	Unpaid	Tr. 25
1.g.	Collection acct telephone \$199	Paid 30 Oct 2003	Ex. F
1.h.	Delinq debt to DOD \$174	Unpaid	Tr. 26-27
1.i.	Judgment credit card debt \$1,200	Unpaid	Tr. 37

The debt in ¶ 1.f. resulted from his failure to turn in the electronic box for his cable television when he moved. He is looking for the box. If he doesn't find it, he will pay the debt. Tr. 25. The debt alleged in ¶ 1.d. was actually some \$22,000 and consisted of a combination of delinquent child and spousal support. Applicant's father paid the debt as a gift to his son. Applicant does not owe any money as a result of the foreclosure on his home. Tr. 24.

### POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information." *Id.* at 527. The President has restricted eligibility for access to classified information to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Exec. Or. 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

Enclosure 2 of the Directive sets forth personal security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3.

### CONCLUSIONS

In the SOR, DOHA alleged Applicant had delinquent financial accounts (§ 1.a.-1.c., 1.f.-1.i.); delinquent child support obligations (§ 1.d.); and a foreclosure action (§ 1.e.). An applicant who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive § E2.A6.1.1.

The Government established through substantial evidence and Applicant's admissions each of the allegations contained in the SOR. The facts establish that Applicant has a history of not meeting his financial obligations (DC E2.A6.1.2.1.) and was unable or unwilling to satisfy his debts (DC E2.A6.1.2.3.). However, the conditions that resulted in this behavior were largely beyond Applicant's control (MC E2.A6.1.3.3)-his wife ran up considerable credit card debt while he was deployed at sea and his separation agreement required him to pay such a substantial portion of his income that he was unable to address some of his wife's debts.

While Applicant has not quite finished paying off all of his delinquent debts, he is well on the road to resolving his financial problems. There is little likelihood of a recurrence of these problems and no potential Applicant would be exploited for the few remaining debts. Applicant is an honorable man who recognizes the need to pay off his debts. Although he considered filing for bankruptcy, he decided to weather the storm and pay these debts off. Applicant fully understands that failure to keep his financial affairs in order could lead to the revocation of a security clearance. Under all the circumstances of this case, Applicant has sufficiently mitigated the financial considerations and does not represent a security risk. I find for Applicant.

### **FORMAL FINDINGS**

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline F: FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: For Applicant

Subparagraph 1.e.: For Applicant

Subparagraph 1.f.: For Applicant

Subparagraph 1.g.: For Applicant

Subparagraph 1.h.: For Applicant

Subparagraph 1.i.: For Applicant

### **DECISION**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

**James A. Young**

**Administrative Judge**

1. Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified.
2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2,

1992), as amended and modified.